

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)

Service Rules for the Advanced Wireless) WT Docket No. 12-357
Services H Block – Implementing Section)
6401 of the Middle Class Tax Relief and Job)
Creation Act of 2012 Related to the 1915-)
1920 MHz and 1995-2000 MHz Bands)

COMMENTS OF METROPCS COMMUNICATIONS, INC.

Carl W. Northrop
Michael Lazarus
Jessica DeSimone
Telecommunications Law Professionals PLLC
875 15th Street, NW, Suite 750
Washington, DC 20005
Telephone: (202) 789-3120
Facsimile: (202) 789-3112

Mark A. Stachiw
General Counsel, Secretary
& Vice Chairman
2250 Lakeside Boulevard
Richardson, TX 75082
Telephone: (214) 570-5800
Facsimile: (866) 685-9618

Its Attorneys

TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	3
II.	LICENSING THE H BLOCK FOR FLEXIBLE USE IS CONSISTENT WITH THE SPECTRUM ACT AND COMMISSION POLICIES.....	6
III.	PAIRED SPECTRUM BLOCKS LICENSED ON AN EA BASIS WILL PROMOTE EFFICIENT USE OF THE H BLOCK SPECTRUM	8
IV.	THE COMMISSION SHOULD REFRAIN FROM IMPOSING ARBITRARY INTERIM BUILDOUT REQUIREMENTS AND NEW RENEWAL STANDARDS ON H BLOCK LICENSEES	13
V.	THE COMMISSION’S PROPOSED COST-SHARING, COMPETITIVE BIDDING AND LICENSING AND OPERATING ROLES ARE GENERALLY SOUND.....	18
a.	The population-based cost-sharing model should be adopted for H Block licensees.....	18
b.	The Commission should apply certain of the proposed secondary market principles to H block licensees	19
c.	Any auction procedures should be designed to promote participation in the auction and should avoid imposing stringent requirements on participants	20
VI.	THE TECHNICAL ISSUES SHOULD BE RESOLVED IN FAVOR OF PAIRED USAGE	23
VII.	CONCLUSION	23

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1995-2000 MHz Bands)

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COMMENTS OF METROPCS COMMUNICATIONS, INC.

MetroPCS Communications, Inc. (“MetroPCS”),¹ by its attorneys, hereby respectfully submits its comments in response to the *Notice of Proposed Rulemaking* (“*NPRM*”) released by the Federal Communications Commission (the “FCC” or “Commission”) in the above-captioned proceeding, which proposes licensing, operation, and technical rules for ten megahertz of spectrum between 1915-1920 MHz and 1995-2000 MHz (the “H Block”).² Drawing upon MetroPCS’ earlier comments with regard to the H Block, and consistent with MetroPCS’ recent comments in the pending *Incentive Auction* proceeding, the following is respectfully shown

¹ For purposes of these Comments, the term “MetroPCS” refers to MetroPCS Communications, Inc. and all of its FCC-licensed subsidiaries.

² *In the Matter of Service Rules for the Advanced Wireless Services H Block – Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, Notice of Proposed Rulemaking, WT Docket No. 12-357, FCC 12-152 (rel. Dec. 17, 2012) (“*NPRM*”).

I. INTRODUCTION AND SUMMARY

MetroPCS wholeheartedly supports the Commission's effort to address years of inaction on this spectrum allocation by moving forward with its longstanding proposal to pair the Lower H Block with the Upper H Block (1915-1920 MHz and 1995-2000 MHz, respectively) and to license it for flexible commercial broadband use. Since 2004, the Commission has been considering how to put this spectrum to its highest and best use,³ and the passage of time has only heightened the critical need of wireless service providers for additional spectrum.⁴ It is long past time for the Commission to adopt licensing rules and auction this important block of spectrum, which is adjacent to the PCS band. While attention needs to be paid to assure that licensing the H Block will not lead to interference with other PCS spectrum, with the appropriate licensing, operating, service and technical rules, the H Block spectrum will "help ensure that the speed, capacity, and ubiquity of the nation's wireless networks keeps pace with the skyrocketing demand for mobile service."⁵

MetroPCS agrees with the Commission that the H Block should be licensed expeditiously for paired use under flexible use service rules and subject to the Part 27 rules. MetroPCS also agrees that PCS licensees that acquire H Block spectrum that is contiguous to its existing holdings should be able to establish unified operations across the adjacent blocks.⁶ MetroPCS has been an ardent supporter of flexible uses whenever it is possible without causing harmful interference to adjacent licensees. Here, permitting the H Block to be used for any fixed or

³ *Service Rules for Advanced Wireless Services in the 1915 – 1920 MHz, 2020 – 2025 MHz and 2175 – 2180 MHz Bands*, Notice of Proposed Rulemaking, 19 FCC Rcd 19263 (2004).

⁴ Indeed, since this spectrum was first identified, the Commission has allocated and licensed the AWS-1 spectrum, 700 MHz spectrum and granted flexible use for mobile satellite spectrum.

⁵ *NPRM* ¶ 1.

⁶ *Id.* at ¶ 54.

mobile service “enables markets in spectrum, allowing innovation and capital formation to occur with greater efficiency”⁷ and falls in line with the goals of the National Broadband Plan, along with the requirements of the Spectrum Act.⁸ Furthermore, pairing the 1915-1920 MHz band with the 1995-2000 MHz band and licensing it on an Economic Area (“EA”) basis will address the critical need for paired spectrum to be offered in manageable block sizes and geographic areas to meet the substantial demonstrated need for mobile wireless broadband spectrum in both urban and rural areas.

As MetroPCS repeatedly has advocated, in order to ensure that spectrum blocks are put to optimal use, the Commission should refrain from adopting arbitrary command-and-control interim buildout requirements, and instead allow economic and market forces to shape deployments in the H Block. Wireless providers are expected to invest significant resources to acquire the spectrum, and as a result, will have powerful economic incentives to promptly build out the licenses to create profitable wireless businesses. However, if the Commission does not find that licensees have adequate market-based economic incentives to construct facilities, and insists upon imposing interim buildout requirements on H Block licensees, then MetroPCS urges the Commission only to utilize population-based, rather than geographic-based, coverage requirements.

In addition, MetroPCS generally supports applying the Commission’s well-tested competitive bidding, secondary licensing, partitioning, disaggregation and spectrum leasing policies to the H Block licenses. Doing so will provide H Block licensees with additional

⁷ FEDERAL COMMUNICATIONS COMMISSION, CONNECTING AMERICA: A NATIONAL BROADBAND PLAN FOR OUR FUTURE, §5.6 (2010) (“*National Broadband Plan*”).

⁸ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6401, 125 Stat. 156, 222-223 (2012), 47 U.S.C. § 1451 (“*Spectrum Act*”).

flexibility, increase competition in the wireless industry and reduce the prospect of confusion that results from having different policies and procedures apply to functionally similar bands. However, MetroPCS notes that the Commission proposes to incorporate one of the controversial aspects of its unresolved *WRS Renewals NPRM*⁹ by proposing that a licensee who has met all of the applicable interim construction and performance standards on a timely basis will nonetheless be subject to a “distinct” but ill-defined renewal standard. MetroPCS submits, as it did in response to the *WRS Renewals NPRM*, that the Commission should retain the renewal expectancy standard that has provided needed certainty in the industry and not adopt a new, higher ill-defined renewal standard.¹⁰

Finally, MetroPCS supports competitive bidding rules designed to increase widespread participation in any H Block auction including by small, rural and mid-tier carriers and new entrants. In order to achieve this participation, the Commission should adopt MetroPCS’ proposed Broadband Incentive Discount (“BID”) Program, in which auction applicants receive a sliding scale of bidding discount credits in inverse proportion to the amount of attributable spectrum the applicant holds in the territory covered by a particular license. The Commission also should avoid auction procedures, such as combinatorial bidding, which unduly complicate auctions and have proven to limit the ability of smaller bidders to acquire spectrum.

⁹ *Amendment of Parts 1, 22, 24, 27, 74, 80, 90, 95 and 101 to Establish Uniform License Renewal, Discontinuance of Operation, and Geographic Partitioning and Spectrum Disaggregation Rules and Policies for Certain Wireless Radio Services*, WT Docket No. 10-112, Notice of Proposed Rulemaking and Order, 25 FCC Rcd 6996, 6998-99, 7029-33 ¶¶ 5, 91-97 (2010) (“*WRS Renewals NPRM*”).

¹⁰ See generally Comments of MetroPCS Communications, Inc., WT Docket No. 10-112 (filed Aug. 6, 2010) (“*MetroPCS WCS Comments*”).

II. LICENSING THE H BLOCK FOR FLEXIBLE USE IS CONSISTENT WITH THE SPECTRUM ACT AND COMMISSION POLICIES

MetroPCS agrees with the Commission's interpretation of Section 6401 of the spectrum Act as provided in the *NPRM*,¹¹ which encourages market-driven, flexible use of spectrum. The phrase "allocate [the H Block] for commercial use" should be understood to mean that the H Block "can be used commercially and licensed to non-federal entities under flexible use service rules through a system of competitive bidding"¹² without causing harmful interference to existing licensees.

MetroPCS also concurs with the Commission's proposal to make the H Block available for flexible use, without restrictions, and subject to the Commission's rules of general applicability under Part 27.¹³ Permitting the H Block to be used for any fixed or mobile service is not only consistent with the Spectrum Act,¹⁴ but also corresponds with the policy goals of the Commission. By licensing the H Block under flexible use rules, the Commission will continue its well-considered policy of promoting enough flexibility to "ensure[] that spectrum is put to its most beneficial use."¹⁵ Indeed, flexible use of the H Block will allow for more innovative services and more competition within in the industry, as well as assist telecommunications providers in meeting the ever-growing demand of consumers. Furthermore, "flexible spectrum rights will help ensure that spectrum moves to more productive uses, including mobile

¹¹ *NPRM* ¶ 14.

¹² *Id.*

¹³ *Id.* at ¶ 16.

¹⁴ Spectrum Act, § 6401(b)(1)(B).

¹⁵ *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, Notice of Proposed Rulemaking, 22 FCC Rcd 17035, 17072 ¶ 84 (2007) (identifying "the establishment of maximum feasible flexibility in both allocations and service rules as a critical means of ensuring that spectrum is put to its most beneficial use.").

broadband, through voluntary market mechanisms.”¹⁶ MetroPCS has operated on its AWS licenses under Part 27 and has found the rules to provide needed flexibility while promoting effective interference-free operations. Nonetheless, MetroPCS strongly agrees that any PCS licensee who acquires adjacent H Block spectrum should be allowed to unify its operations over the contiguous bands, for example with respect to emission limits, as long as it does not adversely affect the operations of others. Implementing common technical standards in adjacent bands will improve efficiency and customer service. As a licensee of PCS spectrum in some markets that are adjacent to the H Block, MetroPCS welcomes this aspect of the H Block technical proposal.

Flexible use also will help ensure that spectrum is put to its highest and best use without the government putting its thumb on the scale. MetroPCS feels strongly that market forces, rather than outdated command-and-control licensing rules, are the most appropriate way to meet the objectives of the Communications Act to ensure that the public is served through the allocation and licensing of spectrum. Market needs evolve over time as technology and consumer demands change. Thus, reliance on market forces provides needed flexibility rather than having regulatory requirements become outmoded and frozen in time. For example, when the 800 MHz spectrum was originally licensed for cellular use, the primary demand was for voice services. However, by giving licensees flexibility, the services have evolved over time to text messaging and data services. Allocations and rules that do not allow carriers to “follow the consumer” will lead to poor spectrum policy and inefficient uses of spectrum.

Finally, promoting flexible use will also ensure that the U.S. Treasury recovers fair value from the auction of the H Block spectrum. Any artificial restrictions on use necessarily limits

¹⁶ *National Broadband Plan*, §5.6.

auction participation, which in turn drives down prices. While maximizing revenue is not the ultimate objective,¹⁷ auctions are intended to recoup for the public at least a portion of the value of the public spectrum resource.¹⁸ Flexible use encourages innovative new entrants to participate in the auction, which will better achieve this goal.

III. PAIRED SPECTRUM BLOCKS LICENSED ON AN EA BASIS WILL PROMOTE EFFICIENT USE OF THE H BLOCK SPECTRUM

To further ensure that the H Block is put to its most efficient use, the Commission should adopt its proposal to license the H Block as paired 5 megahertz blocks on an EA basis.¹⁹ MetroPCS has long encouraged this type of “building block” approach to spectrum licensing.²⁰ The Commission correctly concludes that pairing the 1915-1920 MHz band with the 1995-2000 MHz band “would promote efficient use of the spectrum [and] would allow for the introduction of high-value services.”²¹ In the context of numerous proceedings, MetroPCS has been an advocate of allocating spectrum on a paired basis in manageable block sizes to meet the unsatisfied needs for mobile wireless broadband.²² Smaller block sizes, such as the proposed 5 megahertz blocks, allow for more meaningful participation by competitive carriers, as well as

¹⁷ 47 U.S.C. § 309(j)(7)(A).

¹⁸ 47 U.S.C. § 309(j)(3)(C).

¹⁹ *NPRM* ¶¶ 23, 29.

²⁰ Comments of MetroPCS Communications, Inc., GN Docket No. 12-268, at 19-22 (filed Jan. 25, 2013) (“*MetroPCS Incentive Auction Comments*”); Comments of MetroPCS Communications, Inc., WT Docket Nos. 96-86; 06-150; and 06-169; PS Docket No. 06-229, at 4 (filed May 23, 2007) (“*MetroPCS 700 MHz Comments*”).

²¹ *NPRM* ¶ 23.

²² See, e.g., Comments of MetroPCS Communications, Inc., WT Docket No. 11-186, at 35-36 (filed Dec. 5, 2011); Comments of MetroPCS Communications, Inc., WT Docket No. 10-133, at 19-22 (filed Jul. 30, 2010).

new entrants, in the telecommunications market.²³ Larger spectrum blocks, on the other hand, tend to be utilized only by the larger – and resource-rich – carriers and impede the ability of smaller carriers to participate by cutting down on their opportunities to acquire the appropriate spectrum.²⁴ By adopting its proposal for 5 megahertz paired blocks, the Commission will be promoting competition within the wireless industry by continuing to provide opportunities for competitive carriers to grow. In addition, since the rest of the PCS band immediately adjacent to the H Block is similarly paired, allocating the H Block on a similar paired basis will lead to quicker development of equipment for the spectrum.

In addition to pairing the 1915-1920 MHz and 1995-2000 MHz bands, the Commission also should adopt its proposal to utilize a geographic area licensing scheme on an EA basis. Licensing the H Block on an EA basis is both appropriate for this spectrum and is in the public interest. It is appropriate because, as the Commission correctly notes, “[t]he adjacent bands, both PCS and AWS-4, are licensed on an EA basis.”²⁵ The Commission’s decision to license AWS-1 by EAs allowed licensees to “more rapidly roll out their services.”²⁶ And, when the Commission assigned the spectrum rights in the AWS-4 band in 2012, the Commission, again, chose to

²³ MetroPCS has previously demonstrated that the AWS Auction “was successful in no small part because the Commission took a “building block” approach in the band plan and offered a sufficient amount of spectrum in small enough geographic areas and spectrum block sizes to permit meaningful participation by diverse carriers” *MetroPCS Incentive Auction Comments*, 19-20; *MetroPCS 700 MHz Comments*, 4.

²⁴ See, e.g., *Auction of 700 MHz Band Closes*, Public Notice, Attachment A (rel. Mar. 20, 2008) (Verizon acquired the 22 MHz Upper 700 MHz C Block nearly-nationwide).

²⁵ *NPRM* ¶ 29 (footnotes omitted).

²⁶ *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Report and Order, 18 FCC Rcd 25162, 25174, ¶ 31 (2003) (“AWS-1 Report and Order”).

license the spectrum on an EA basis.²⁷ This decision was based in no small part on the reasoning that “EAs allow licensees to build their geographic coverage as needed, are consistent with the other requirements established for this band, and promote the Commission’s goal of widespread broadband service.”²⁸ Notably, the Commission has also proposed licensing the spectrum reclaimed in its upcoming incentive auction in paired 5 MHz blocks on an EA basis, a proposal that MetroPCS supported in that proceeding.²⁹ The Commission should follow its reasoning in the AWS-4 and incentive auction proceedings and recognize that licensing the H Block on an EA basis will “encourage the offering of broadband service to both broadband geographic areas and sizeable populations.”³⁰

MetroPCS is pleased that the Commission has recognized the substantial public interest benefits that will result from licensing the H Block on an EA basis in the modern-day wireless market, where wireless carriers are of various sizes, hold different amounts of spectrum, and offer services in different areas, but all have the same desire to obtain additional spectrum and deploy innovative broadband services. Specifically, the Commission has acknowledged that such a licensing scheme will appeal to both small and large providers because these license sizes are “small enough to provide spectrum access opportunities for smaller carriers but also may be

²⁷ *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands, WT Docket, No. 12-70, Fixed and Mobile Services in the Mobile Satellite Service Bands at 1525-1559 MHz and 1626.5-1660.5, MHz, 1610-1626.5 MHz and 2483.5-2500 MHz, and 2000-2020 MHz and 2180-2200 MHz, ET Docket No. 10-142, Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket No. 04-356, Report and Order and Order of Proposed Modification, FCC 12-151 at ¶ 49 (rel. Dec. 17, 2012) (“AWS-4 Report and Order”).*

²⁸ *Id.* at ¶ 50.

²⁹ *MetroPCS Incentive Auction Comments*, 18-19.

³⁰ *AWS-4 Report and Order*, ¶ 50.

aggregated up to larger license areas to achieve economies of scale”³¹ – a point previously recognized in the AWS-4 Proceeding.³² Further, EAs are small enough to allow larger carriers to satisfy their urban needs while at the same time allowing other carriers access to spectrum outside the major urban areas. The Commission recently reiterated this line of reasoning in its incentive auction *NPRM*.³³ In addition, not only will licensing by EAs benefit incumbent carriers, but it also may be beneficial to new entrants in the market because “[t]hese bands have not proven unduly difficult for licensees to administer”³⁴ since they are small enough to simplify the network development process. EA blocks also benefit consumers by not artificially constraining where licensees can offer service. For example, the MSA/RSA dichotomy in cellular led to some MSA licensees being unable to expand outside of urban areas because they did not hold the rural licenses. Further, some RSAs went unlicensed which meant no one could build facilities there. Because EAs have proven successful in other, similar and adjacent spectrum bands, and can appeal to a wide-range of participants in the wireless industry, the Commission should continue to adopt its own recommendation and apply this licensing scheme to the H Block.

While proposing to license the H Block on an EA basis, the *NPRM* does, nonetheless, seek comment on whether a nationwide license should be considered.³⁵ The Commission should reject a nationwide license. As the Commission repeatedly has recognized, all carriers, large and

³¹ *NPRM* ¶ 29.

³² *AWS-4 Report and Order*, ¶ 50.

³³ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, FCC 12-118, GN Docket No. 12-268, ¶ 148 (rel. Oct. 2, 2012).

³⁴ *AWS-4 Report and Order*, ¶ 50.

³⁵ *NPRM* ¶ 29.

small, need additional spectrum. Licensing the H Block on a nationwide license limits the additional spectrum to a single licensure which means that all other carriers that might need spectrum would be foreclosed. There also is a risk that a dominant national carrier, which does not have a need for additional spectrum in all areas, will be content to sit on all of the spectrum nationwide in order deny other carriers much needed spectrum. EA licensing allows each license to be acquired by the bidder that most highly values the spectrum in that geography. Even though the wireless market is evolving to a national market, spectrum needs are still local. Licensing spectrum on a nationwide basis at this late date will not assist the Commission in its twin goals of making sure all carriers that need spectrum have an opportunity to acquire it and that the bidder that values it most actually acquires the spectrum.

For the reasons set forth above, MetroPCS submits that EA licenses will promote the widest array of services, new technologies and result in the other substantial consumer benefits (*e.g.*, lower prices) by fostering increased competition. Indeed, MetroPCS submits that in light of the Commission's licensing experience in the 700 MHz block, allocating a nationwide H Block license could be struck down as being inconsistent with the statutory mandate for the Commission to ensure that designated entities (*e.g.*, small businesses, women and minority controlled businesses, rural telecom, etc.) are given a meaningful opportunity to participate in its auctions. In MetroPCS' view, the domination of the 700 MHz auction by the two largest wireless carriers was a direct result of the use of channel block and geographic license sizes that were so big that they unfairly favored major players and skewed the auction against smaller businesses that were, in fact, designated entities ("DEs").

IV. THE COMMISSION SHOULD REFRAIN FROM IMPOSING ARBITRARY INTERIM BUILDOUT REQUIREMENTS AND NEW RENEWAL STANDARDS ON H BLOCK LICENSEES

In order to ensure that the benefits from the optimal pairing and licensing are realized, the Commission should refrain from imposing interim buildout requirements on H Block licensees. While MetroPCS appreciates and supports the Commission's desire to "promote the efficient deployment of wireless services, including to rural areas, and ensure that spectrum is used,"³⁶ MetroPCS does not agree that imposing interim performance obligations is the correct method to achieve such goals.

First, licensed spectrum will not "lie fallow" in the absence of performance requirements due to natural market incentives.³⁷ As MetroPCS has previously argued, interim construction benchmarks "are unnecessary and are counterproductive" since natural incentives will already exist with the licensees to build out their H Block licenses.³⁸ These incentives stem from the fact that service providers will already have invested substantial resources into obtaining the H Block spectrum. The expenditure of large amounts of capital will incentivize wireless carriers to build out expeditiously to increase their revenue and obtain returns on their significant investments.

No matter how carefully the Commission considers its proposed interim construction benchmarks, the simple immutable truth is that such fixed standards are *inherently arbitrary*. This point is easily demonstrated by looking at the inconsistent parade of construction standards the Commission has imposed over time. For example, (a) 30 MHz block PCS licensees had to

³⁶ *NPRM* ¶ 80.

³⁷ *Cf. NPRM* ¶ 81.

³⁸ *MetroPCS Incentive Auction Comments*, 22.

serve one-third of their population within five years;³⁹ (b) certain 10 MHz and 15 MHz PCS licensees had to serve only 25% in five years;⁴⁰ (c) AWS licensees need to make a substantial service showing at the end of their 15 year license term;⁴¹ (d) 700 MHz EA or CMA licensee holders must serve 35% of their geographic area within four years;⁴² (e) 700 MHz C Block licensees must serve 40% of the population within each EA within four years;⁴³ and (f) the AWS-4 licensees also must serve 40% of the population within four years but has only seven years to reach 70%.⁴⁴ It is no surprise, given the inconsistent variable standards, that both licensees and the Commission find themselves having to undertake the burden of dealing with requests for waivers of the interim construction benchmarks. For example, ten licensees found it necessary to seek extensions of the four year interim benchmark applicable to their 700 MHz Block licenses and the Commission is having to devote its limited resources to processing these requests.⁴⁵ This relatively large number of waiver requests indicates that the Commission is not good at setting realistic achievable construction benchmarks and such benchmarks may not anticipate all possible circumstances which may make compliance difficult.⁴⁶ The better approach would be to allow the marketplace to dictate construction timetables knowing that

³⁹ 47 C.F.R. § 24.203(a).

⁴⁰ 47 C.F.R. § 24.203(b).

⁴¹ 47 C.F.R. § 27.14.

⁴² 47 C.F.R. § 27.14(g)(1).

⁴³ 47 C.F.R. § 27.14(h).

⁴⁴ *AWS-4 Report and Order*, ¶¶ 196-97.

⁴⁵ *Wireless Telecommunications Bureau Seeks Comment on Requests for Waiver and Extension of Time to Construct 700 MHz A and B Block Licenses*; Public Notice, DA 12-1827 (rel. Nov. 13, 2012).

⁴⁶ As the Commission has had the chance to observe, arbitrary construction deadlines may be unmet because of unforeseen circumstances – such as illustrated in the current waivers for the 700 MHz Lower Block A licensees.

carriers have no incentive to pay market prices for spectrum at auction if they have no intention of constructing systems and serving the public.

Second, it is no secret that wireless providers, especially competitive carriers, are in desperate need of more spectrum.⁴⁷ The looming spectrum crisis has been a consistent issue in the wireless industry for years, with providers urging the Commission to make more spectrum available. In response, the Commission has worked to create additional opportunities for spectrum availability, such as this opportunity in the H Block. This critical need to harness additional spectrum resources will also provide a powerful incentive for wireless carriers to build out their licensed territory expeditiously. The service rules for the AWS band amply demonstrate this point. Although licenses acquired in Auction 66 are subject only to end-of-term substantial service requirements, many licensees, including MetroPCS, have deployed service over these licenses years ahead of this deadline. When, as now, the market demands deployment of additional spectrum resources, carriers will rapidly deploy independently of artificial construction requirements. The Commission can take great comfort in the Auction 66 experience as it clearly shows that the marketplace works.

Third, as MetroPCS repeatedly has pointed out, buildout requirements tend to favor incumbents over new entrants that desire to expand into new areas. Incumbents generally will have the sites and other infrastructure, which facilitates the prompt deployment of new spectrum. In contrast, new entrants are forced, in addition to purchasing the spectrum, to invest heavily in facilities – in some cases long before there is any demonstrated need or demand. This disparity

⁴⁷ See e.g., *NPRM* ¶ 9 (recognizing that “the explosive growth of wireless broadband services has created increased demand for wireless spectrum, which is expected to continue increasing, despite technological developments that allow for more efficient spectrum use.”).

tilts the competitive playing field and does not support the Commission's goals of promoting innovation and encouraging company neutrality.

While MetroPCS appreciates the Commission's "effort[s] to foster deployment expeditiously in the H Block,"⁴⁸ the proposed interim buildout requirements may actually be counterproductive. These requirements may force a licensee to make decisions based on this government-mandated, one-size-fits-all requirement, rather than based on the changing or evolving needs of each market they are serving. The wireless industry is constantly evolving, and interim construction requirements may not always fit squarely into the future market. It is for these reasons that the Commission should allow the market to encourage deployment in the H Block.

Nevertheless, if the Commission does decide to adopt interim buildout requirements, any such requirements should be based upon the population served ("POPs-based") and not upon geographic coverage requirements. As MetroPCS has previously recognized, "a POPs-based buildout requirement is a far more accurate measure of useful coverage in a market, as opposed to an arbitrary geographic percentage determined by regulatory fiat."⁴⁹ Due to the "one-size-fits-all" nature of a geographic-coverage measurement, it is unable to account for differences in license area.⁵⁰ This is a significant issue because different amounts of time and resources are required for different types of areas. Therefore, if the Commission is determined to establish interim buildout requirements for the H Block, it should only consider using a population-based

⁴⁸ *NPRM* ¶ 82.

⁴⁹ *MetroPCS Incentive Auction Comments*, ¶ 24.

⁵⁰ Further, geographic-based construction requirements lead to the Commission having to decide whether licensees must serve completely barren land, which is devoid of customers.

coverage requirement and resist those comments that may advocate for a geographic-based requirement.

As is set forth in Section V, below MetroPCS generally supports a number of the proposed licensing and operating rules presented in the *NPRM*. There is, however, one aspect of the proposal that raises some concern. The Commission proposes that a licensee who has met all of the applicable interim construction and performance standards on a timely basis will nonetheless be subject to a renewal showing that requires them to “demonstrate that they have provided, and are continuing to provide, service to the public, and that they are compliant with the Communications Act and the Commission’s rules and procedures.”⁵¹ The *NPRM* also makes clear that this renewal showing is separate and distinct from the interim showings that the licensee has met.

As MetroPCS has previously advocated,⁵² the Commission should refrain from adopting a new, ill-defined renewal standard adapted from the *WCS Renewals NPRM*.⁵³ By introducing a higher but vague renewal standard, the Commission will be stripping away a level of certainty and stability that the wireless industry has grown accustomed to rely upon. In the *NPRM*, the Commission provides a variety of factors to be considered in evaluating renewal applications that will only cause confusion and instability. The Commission has explained that it will review renewal showings by considering factors such as “the level and quality of service, whether service was ever interrupted or discontinued, whether service has been provided to rural areas,

⁵¹ *NPRM* ¶ 90.

⁵² See generally *MetroPCS WCS Comments*

⁵³ The Commission’s reliance on the *WRS Renewal NPRM* is inappropriate. The *WRS Renewal* proceeding is still pending and the proposed rule has not yet been adopted. Indeed, many commenting parties have expressed concern over various aspects of the *WRS Renewal NPRM*.

and any other factors associated with a licensee’s level of service to the public.”⁵⁴ Because renewal applicants will not know how this list of factors will be applied, or what weights will be given to each, they will be uncertain as to the outcome of their renewal applications. This uncertainty can diminish investment and the overall desire to participate in the renewal process.⁵⁵ Specifically, this laundry list approach risks undermining the “renewal expectancy” that has played a critical role in allowing licensees to secure needed long term financing. Capital will dry up if lenders think that carriers have a wasting, fixed-term asset that they cannot expect to be renewed. In order to maintain the current level of certainty that exists within the market, the Commission should refrain from adopting new renewal standards for H Block licensees.

V. THE COMMISSION’S PROPOSED COST-SHARING, COMPETITIVE BIDDING AND LICENSING AND OPERATING ROLES ARE GENERALLY SOUND

a. The population-based cost-sharing model should be adopted for H Block licensees

The *NPRM* proposes rules governing the H Block that draw heavily upon prior successful licensing experiences and MetroPCS generally is in support. For example, the proposed cost-sharing rules for both the 1915 – 1920 MHz and the 1995 – 2000 MHz bands are similar to the reimbursement mechanisms that MetroPCS was subject to in both the PCS band for incumbent microwave users,⁵⁶ and in the AWS band for both microwave incumbents and Government users.⁵⁷ These cost sharing programs proved to be workable and to give potential bidders certainty.

⁵⁴ *NPRM* ¶ 90.

⁵⁵ *MetroPCS WCS Comments*, 20.

⁵⁶ *See* 47 C.F.R. § 24.239 *et seq.*

⁵⁷ 47 C.F.R. § 27.1160 *et seq.*

There is one important governing principle that MetroPCS asks the Commission to apply in establishing an H Block cost-sharing program: the costs to be borne by the H Block licensees should be fully ascertainable in advance by the prospective bidder for each market. This clarity will allow the applicant to accurately factor the cost-sharing obligation into its bidding decisions. The key to a successful auction is for bidders to have sufficient information in advance so that they can formulate reasoned bidding strategies and place economically rational bids. Surprises in the economic terms can foster unintended consequences and less than optimal results.

With this governing principle in mind, MetroPCS supports the population-based cost-sharing formula proposed in the *NPRM*,⁵⁸ rather than having each H Block licensee pay a *pro rata* amount of the amount owed to UTAM based on the gross winning bids in the initial auction. This latter formula means that the amount owed by each H Block licensee will be based upon circumstances beyond its control and which are largely incalculable in the course of the auction.

b. The Commission should apply certain of the proposed secondary market principles to H block licensees

MetroPCS supports the proposed extension of the Commission's long-established secondary markets principles to the H Block because such policies have been proven to serve the public interest. In order to promote more efficient use of the H Block spectrum, the Commission should permit partitioning and disaggregation, along with spectrum leasing, by licensees in the H Block pursuant to the Part 27 rules. These secondary market transactions will provide additional flexibility to "enable[] licensees to make offerings directly responsive to market demands for particular types of services" and "allow[] market entry by new entrants," and thus, increase

⁵⁸ *NPRM* ¶ 60.

competition in the industry.⁵⁹ Further, liberal partitioning and disaggregation policies allows license sizes that do not necessarily fit the circumstances to be “right-sized” by the winning bidder. This is an important safety valve in any allocation spectrum to ensure that the geographic license and block sizes do not prevent licenses from being altered after the fact to meet market realities. Therefore, it is in the public interest to extend the Part 27 rules concerning these transactions to H Block licensees as well. Doing so will provide H Block licensees the freedom to use their licensed spectrum in the way that they determine would make the best business sense through the use of partitioning, disaggregation or leasing, and thus, ensure that this spectrum is being utilized to its full potential. In addition, creating consistency among the secondary market rules for spectrum in different bands will promote certainty for carriers’ business practices. This increased certainty and flexibility of use will drive participation and increase auction revenues.

c. Any auction procedures should be designed to promote participation in the auction and should avoid imposing stringent requirements on participants

MetroPCS supports the Commission’s proposal to conduct an H Block auction in conformity with the Commission’s general competitive bidding rules.⁶⁰ These auction rules should be designed to increase participation in the auction and should refrain from imposing stringent requirements on participants. The Commission should strive to increase opportunities in the auction for a broad array of carriers, including new entrants and others who have limited spectrum resources in particular markets.

In this respect, the Commission should consider MetroPCS’ proposed Broadband Incentive Discount (“BID”) Program, in which auction applicants receive a sliding scale of

⁵⁹ *Id.* at ¶ 94.

⁶⁰ *Id.* at ¶ 103.

bidding discount credits in inverse proportion to the amount of attributable spectrum the applicant holds in the territory covered by a particular license. MetroPCS has previously recommended its BID Program, which would help entities, including new entrants and smaller providers, and would create the prospect of a more diverse and entrepreneurial licensee base. The result would be increased competition and, thus, increased innovation and investment. The BID Program's proposed sliding discount scale (as outlined below) generally would allow market forces, rather than regulatory command and control processes, to work while still increasing the prospect that new entrants, innovators and other persons needing spectrum would be able to end up as licensees.

Traditionally, bidding credits have been based on business size and/or ownership characteristics. However, a downside with using business size as a characteristic is that the provision of telecommunications services is a capital intensive business. This leads to a paradox where companies with small amounts of revenue bid on licenses which, if they win, would require many times the amount paid for the licenses to actually deploy and operate. Another approach, such as the BID proposal, would help fix this inconsistency. Rather than according designated entity ("DE") credits based upon an applicant's size, credits should be given to applicants in inverse proportion to the amount of attributable spectrum that the applicant holds in the auctioned license territory.⁶¹ MetroPCS' BID Program would utilize the following sliding scale:

⁶¹ As an alternative to a pure spectrum test, the Commission could adopt a spectrum efficiency and use test, which would reward carriers who are efficiently using existing spectrum resources and are in danger of running out of capacity over bidders who are inefficient users of spectrum and are not in a severe need for additional spectrum.

<u>Attributable Spectrum</u>	<u>% Discount</u>
0 to 35 MHz	60%
35 to 70 MHz	40%
70 to 105 MHz	20%
105+ MHz	0%

In addition, incumbent applicants would be precluded at the initial auction stage from acquiring any license that would cause the applicant to exceed the pre-auction spectrum screen.⁶² Applicants also would be attributed with all spectrum held by the applicant, the applicant's affiliates, all disclosable interest holders in the applicant, and all companies with which the applicant had an auction-related agreement.

The BID program will create incentives for investment in broadband by wireless providers and promote innovation by creating opportunities for licensees most likely to introduce disruptive, cutting-edge technologies and services. Furthermore, MetroPCS' BID proposal serves the public interest and statutory mandates by promoting the dissemination of licenses to a broader group of licensees by creating greater opportunities for participation by rural, small, mid-tier carriers, new entrants and traditional designated entities. Overall, the BID Program is designed to foster new and increased competition in the wireless industry by increasing participation in the auction and should be considered for any future H Block auction.

⁶² "Pre-auction spectrum screen" means the screen in effect *prior to* the allocation of the spectrum that is the subject of the auction, as well as any screen that is adopted by the Commission's pending mobile spectrum holdings proceeding. *See Policies Regarding Mobile Spectrum Holdings*, Notice of Proposed Rulemaking, 27 FCC Rcd 11710 (2012).

VI. THE TECHNICAL ISSUES SHOULD BE RESOLVED IN FAVOR OF PAIRED USAGE

The *NPRM* pays appropriate attention to the need to “permit optimal use of the H Block without causing harmful interference to commercial mobile service licensees in the 1930 – 1995 MHz PCS band.”⁶³ MetroPCS, which is a PCS licensee, certainly does not want destructive interference to the PCS incumbents. However, given the critical need for more paired spectrum, MetroPCS does urge the FCC to use its best efforts to address these interference issues in a manner that will allow the H Block to be licensed as tentatively proposed.

In this regard, MetroPCS does believe that the evolution of the market to LTE-based services is a positive development that will reduce the prospect for interference derived from the use of CDMA technologies in the PCS B Block, and the possible use of CDMA in the H Block.

MetroPCS also has been approached by other PCS licensees to participate in further technical studies to consider and address interference issues. MetroPCS plans to cooperate in these efforts, and will report to the Commission as appropriate.

VII. CONCLUSION

For the foregoing reasons, MetroPCS asks the Commission to encourage efficient use of the H Block spectrum by licensing it for flexible use and on an EA basis. To further these efforts, the Commission should also refrain from adopting interim buildout requirements and allow licensees additional flexibility to manage their spectrum through certain secondary market transactions that encourage certainty and stability among wireless carriers. MetroPCS also urges the Commission to adopt auction procedures that encourage participation and recommends the

⁶³ *NPRM* ¶ 33.

BID proposal as a means of achieving this goal. Finally, MetroPCS believes that any potential technical issues should be resolved in favor of paired usage.

Respectfully submitted,

MetroPCS Communications, Inc.



By:
Carl W. Northrop
Michael Lazarus
Jessica DeSimone
TELECOMMUNICATIONS LAW
PROFESSIONALS PLLC
875 15th Street, NW, Suite 750
Washington, DC 20005
Telephone: (202) 789-3120
Facsimile: (202) 789-3112

Mark A. Stachiw
General Counsel, Secretary
& Vice Chairman
MetroPCS Communications, Inc.
2250 Lakeside Blvd.
Richardson, Texas 75082
Telephone: (214) 570-5800
Facsimile: (866) 685-9618

Its Attorneys

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